One Pierrepont Plaza-16th Floor, Brooklyn, NY 11201 Tel: (718) 330-1200 Fax: (718) 855-0760

David E. Patton Executive Director and Attorney-in-Chief Deirdre D. von Dornum Attorney-in-Charge

April 16, 2021

By ECF and E-Mail The Honorable Pamela K. Chen United States District Judge Eastern District of New York 225 Cadman Plaza East Brooklyn, NY 11201

Re: United States v. Brendan Hunt, 21-cr-0086-PKC

## Your Honor:

We respectfully submit the following documents evidencing the defendant's public online presence. As to the Government's demonstratives for opening. We object to the use of demonstratives in opening because no evidence will have been admitted at that point. If, however, the Court permits the government to use demonstratives, the defense seeks to offer demonstratives in its own opening, and respectfully requests the opportunity to prepare and disclose these on April 19, 2021. As to the specific slides, should the Court permit them to be used, the slides should identify the platform used and the recipient of the statements.

Regarding the screenshots the defendant seeks to admit evidence of his public, online presence, and offer the attached 7 pages, which show a chain followed by FBI that begins with the "Kill Your Senators" video:

BITCHUTE "Kill Your Senators" Video links to XrayUltra Bitchute Page → XrayUltra BITCHUTE "About" (described as a media production company run by Brendan Hunt) links to X-Ray Ultra Studios webpage →

www.xrayultra.com (X-Ray Ultra Studios webpage) describes Brendan Hunt (X-Ray Ultra) as a New York-based filmmaker, comic artist, musician, and journalist, and links to **Brendan Hunt** Youtube Channel →

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<sup>&</sup>lt;sup>1</sup> The government has requested Rule 16 reciprocal disclosure when two conditions are met. Under FRCP 16 (b) (1)(A), reciprocal discovery is required when "(i) the item is within the defendant's possession, custody, or control; and (ii) the defendant intends to use the item in the defendant's case-in-chief at trial." We have not yet decided what exhibits will be offered in our case-in-chief, in any. If we plan to offer anything that is outside of the government's discovery or 3500 material, we will provide that separately.

**Brendan Hunt Youtube Channel**, which describes Brendan Hunt as a classically-trained actor, known for ground-breaking documentation of topics that "explore the sometimes uncomfortable truths of our society through art and activism" and links to **website brendanhunt.com**→

**BrendanHunt.com**, which describes Brendan Hunt as an Actor, Musician, and Artist with a BA in Theater Arts from Fordham University, describes his acting experience and provides reels and contact for acting roles.

A google search for X-ray Ultra leads to **X-ray Ultra Youtube Channel**, which links the reader back to **xrayultra.com**.

Each of these pages and more were quickly visited by the FBI Social Media Exploitation Team upon receiving the tip on January 10, 2021. The intake examiner will testify (consistent with 3500-JH-2 that she accessed social media sites to identify the speaker and review the publically available information. FBI 302 of Threat Examiner, 3500-JH-2 (FBI first looked at "what a member of the public would see.").

This evidence is necessary context for the alleged threats on three separate grounds.

First, internet presence context evidence is relevant to the specific intent element – that is, whether the defendant intended to use these threats to interfere with/impede/intimidate Members of Congress. Should the Court decide that *Virginia v. Black* requires a subjective intent element for "true threats," this material is also relevant to that question. *In re White*, No. 2:07CV342, 2013 WL 5295652, at \*57 (E.D. Va. Sept. 13, 2013) ("the Court finds that the language of White's various postings and emails does not, alone, rise to the level of a "true threat," as the majority of his writings lack discernible threats and are "instead . . . replete with criticisms of [the threat recipient] on "highly controversial social issues," and are more consistent with "defendant's intent to engage in political or social discourse.").

Second, the internet presence context evidence is relevant to what the listener would consider context – that is, how a listener would perceive statements made on public social media (as opposed to private communications directed to a particular threat recipient). This goes to the element of "true threat" and the First Amendment requirement that an objective listener would perceive a "true threat."

In the internet context, the "comedy club" or the "speech" a listener attends is now virtual. When one consumes social media, one will see the obvious links to which the speaker directs listeners. In *In re White*, for instance, the court considered the surrounding content of the sites where the defendant made his statements, finding it relevant that the majority of his statements "were publicly posted to Internet forums promoting discussion of historically contentious issues such as white supremacy and neo-Nazi ideologies." *In re White*, No. 2:07CV342, 2013 WL 5295652, at \*55 (E.D. Va. Sept. 13, 2013). So, too, here, the government is seeking to prove the element "true threat" by use of statements outside of the threats alleged.

Following the goose and gander rule, it would be unfair to allow the government to prove state of mind or "true threat" by the defendant's online presence apart from the charged threats, e.g. ECF 64 n. 3 (videos in government's exhibits posted to Youtube), unless the defendant has equal opportunity to offer counter evidence from which other inferences can be drawn. This is among the factors to be considered. *See, e.g., Watts,* 394 U.S. at 707–08; *Bly,* 510 U.S. at 459; *Carmichael,* 326 F.Supp.2d at 1281.

Third, the content of Mr. Hunt's other social media profiles are necessary for a fact-finder to assess whether Mr. Hunt had any influence over his readers, which is essential to the determination of whether he in fact made a threat. Courts have emphasized the importance of this assessment in cases where the language of the alleged threat instructs others to commit acts of violence, is the kind of influence that the speaker has over his listeners. See, e.g., United States v. Wheeler, 776 F.3d 736, 744 (10th Cir. 2015) (looking at whether the listeners are "subject to the will of the threatening party"); see also United States v. White, 670 F.3d 498, 513 (4th Cir. 2012) ("White's direction to others to kill Warman could have amounted to a threat if White had some control over those other persons or of White's violent commands in the past had predictably been carried out."). In determining the identity of the speaker's listeners and whether they may have "predictably acted on his violent commands," courts have looked at the content of the speaker's surrounding writings. See, e.g. In re White, No. 2:07CV342, 2013 WL 5295652, at \*58 (E.D. Va. Sept. 13, 2013) ("The only information the Court can glean about White's general audience is derived from the content of White's writings. Specifically, his readers (for whatever reason) peruse editorials that express offensive and inflammatory white supremacist and neo-Nazi ideologies."). Turner, 720 F.3d at 414 (2d Cir. 2013) (discussing Turner's website, weekly radio talk show used to broadcast his views).

Thank You for Your attention to this matter.

Respectfully Submitted,
/s/

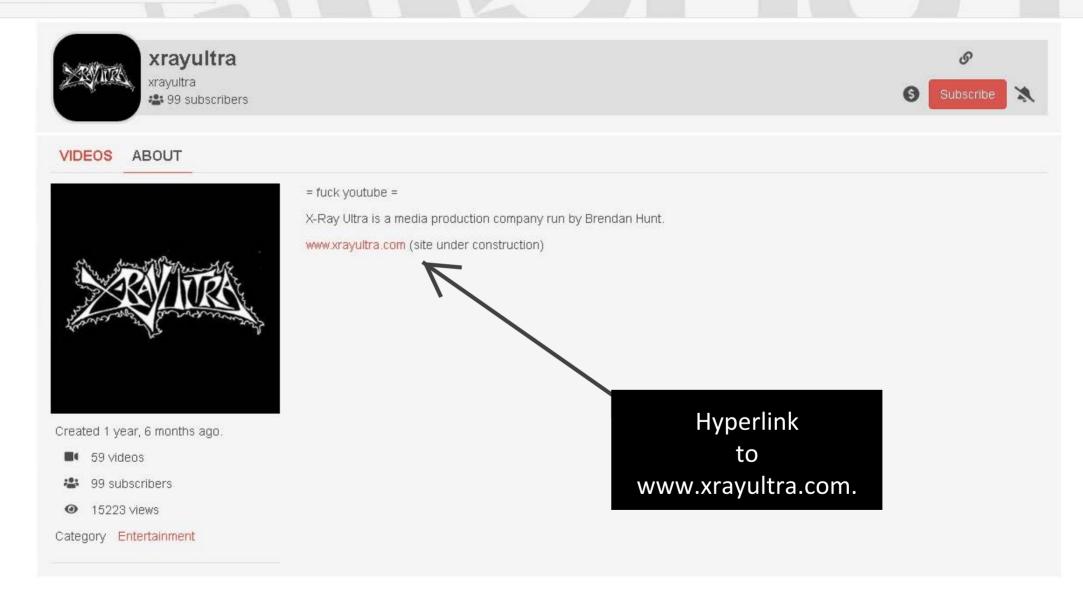
JAN A. ROSTAL, Esq.
LETICIA M. OLIVERA, Esq.

Enc.

Cc: Counsel of Record



Q Search..





We're turning all the lights back on here at xrayultra.com! The plan is to produce all-new blog and video posts, independent comic books, and original music. First, though, is to get all the old stuff back online.

By the end of the day, all blog posts from 2010-2012 should be up again, with the rest to come soon. In the meantime, please check out these YouTube channels where most of the XrayUltra videos have been re-posted:

- 1. Brendan Hunt (main): www.youtube.com/channel/UC0tjr9NnhDWhibdV\_T-DqKA
- 2. xrayultra 2 (backu) https://www.youtube.com/user/911truthjfk

Our social media sites are conting back online, too! Please see the following links to subscribe, follow, like and support. Some of these pages have not been used in a while but will start to publish content again in the next few weeks.

BitChute: https://www.bitchute.com/xrayultra/

Gab: https://www.gab.com/xrayultra

Reddit: https://www.reddit.com/user/xrayultra

Twitter: https://twitter.com/xrayultra Tapas: https://tapas.io/xrayultra

Facebook: https://www.facebook.com/xrayultra Patreon: https://www.patreon.com/xrayultra



Hyperlink to Brendan Hunt's Youtube.



LATEST NEWS

Brendan Hunt (X-Ray Ultra) is a

New York-based filmmaker

## ARCHIVES

April 2020 April 2014 October 2011 September 2011 May 2010

